

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
JUDGE DAVID M. GLOVER

DIVISION I

CA08-682

January 7, 2009

McKEE FOODS CORPORATION &  
RISK MANAGEMENT RESOURCES  
APPELLANTS

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION [F611959]

V.

PATRICIA BALLI

APPELLEE

REVERSED

Appellee, Patricia Balli, suffered a compensable work-related injury on July 25, 2006, when she suffered a concussion and a laceration, which was closed with staples. Appellants paid appropriate medical and temporary-total-disability benefits for these injuries. Balli then requested a hearing regarding additional temporary-total-disability benefits and medical expenses for treatment of vertigo or functional disorder, which she asserted were caused by her work-related injury; appellants denied Balli's entitlement to these benefits. An administrative law judge determined that Balli had proved by a preponderance of the evidence that she was entitled to additional medical treatment for a functional disorder, but that she was not entitled to additional temporary-total-disability benefits. The Commission affirmed and adopted the ALJ opinion. Appellants now appeal

to this court, arguing that there is no substantial evidence to support the Commission's award of additional medical treatment for Balli's vertigo or functional disorder. They specifically argue that there are no objective medical findings to support the finding that Balli has either vertigo or functional disorder. Balli did not appeal the denial of additional temporary-total-disability benefits. We reverse the Commission's award of additional medical benefits due to a lack of objective medical findings.

In *Liaromatis v. Baxter County Regional Hospital*, 95 Ark. App. 296, 297-98, 236 S.W.3d 524, 525-26 (2006) (citations omitted), this court stated our well-settled standard of review for challenges to the sufficiency of the evidence in workers' compensation cases:

When reviewing a decision of the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the findings of the Commission and affirm that decision if it is supported by substantial evidence. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The issue is not whether we might have reached a different result or whether the evidence would have supported a contrary finding; even if a preponderance of the evidence might indicate a contrary result, if reasonable minds could reach the Commission's conclusion, we must affirm its decision. The Commission is required to weigh the evidence impartially without giving the benefit of the doubt to any party.

At the hearing before the ALJ, Balli testified that she had worked at McKee Foods since 1975. She said that on the day of her injury, she was working the line as a "wrapper operator," saw a "bad" cake on the line, began to get up to throw it out, and the chair in which she was sitting fell apart causing her to fall and hit her head on the floor. Balli said that she had a concussion and had to have staples in her head, and that her shoulder and

neck were also injured, but they were now better. Balli stated that she had been dizzy since the fall, although it had improved somewhat, and that she had never had problems with dizziness prior to the fall. She said that the dizziness was worsened by movement; that she got dizzy ten to forty times per day, with the episodes lasting as long as thirty minutes; that she was unable to work machinery because of the dizziness; and that she could no longer drive because of the dizziness. Balli also testified that she kept her twenty-month-old grandson alone every day for six to eight hours, and that she had no problem caring for him.

After the work-related injury, Balli was seen by Max Beasley, ANP, who on July 27, 2006, noted Balli's injuries as a concussion, head laceration, thoracic pain and right-shoulder pain. He noted that Balli reported that she was still having some dizziness, although she denied nausea, vomiting, or any visual disturbances. Beasley returned Balli to work on July 31, with the restriction that she avoid safety-sensitive duties until she was rechecked. On August 3, Beasley removed the staples from Balli's head, again restricting her from performing safety-sensitive duties and warning her to be careful changing positions due to her ongoing mild vertigo. On August 10, Balli reported to Dr. Cathleen Vandergriff that she was still having vertigo with any movement, and that it was associated with nausea but no vomiting. Balli complained of continued vertigo on August 17, and Beasley noted that he would ask her to see a neurologist if she was still experiencing those symptoms in two weeks.

Balli was seen by neurologist Dr. Steven Moon. In a letter to Beasley dated September 18, Dr. Moon noted that Balli reported having positional vertigo with associated nausea since the accident, which was triggered when she turned quickly or tried to turn at work. Dr. Moon suspected post-traumatic canalithiasis, and ordered an MRI of the brain to rule out any underlying structural abnormality. According to Dr. Moon, the MRI was unremarkable other than a few chronic small vessel ischemic changes.

Balli was seen by Dr. Michael Marsh, who diagnosed her with benign positional vertigo, which in his opinion was related to her work-related accident. In response to a January 7, 2007 faxed letter from appellant Risk Management Resources asking what diagnostic testing was used to confirm the diagnosis of benign positional vertigo, Dr. Marsh stated that it was based on history and that there was no need for further diagnostic testing unless Balli's problems did not resolve. In notes dated May 14, 2007, Dr. Marsh reported that ENG and ABR tests performed to determine the extent of vertigo were negative. He also was of the opinion that Balli's dizziness was brought on by stress and that there was no evidence of benign paroxysmal positional vertigo; he noted that he doubted BPPV but suspected functional disorder.

In granting Balli additional medical benefits, the ALJ made the following findings:

In this particular case there is no evidence that claimant suffered from any dizziness prior to her head injury in July 2006. However, at the time of claimant's initial medical treatment at the hospital on that date claimant was complaining of dizziness. The medical records contain a history of these same complaints since that time. The medical records indicate that claimant's treating physicians believe that this condition is a result of her injury in July 2006. Additional testing which has

recently been performed at the request of Dr. Marsh indicates that claimant's condition may be the result of a functional disorder.

Based upon the evidence presented, I find that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable head injury. In this particular case, claimant suffered an injury to her head when she struck it against a concrete floor on July 25, 2006. Claimant was taken to the hospital where she was diagnosed as suffering from a concussion and a scalp laceration which required four staples to close. Since the time of that initial medical treatment the claimant has had complaints of dizziness which her treating physicians have attempted to evaluate and treat. There is no indication that claimant suffered from any dizziness prior to her compensable injury, and the medical records indicate that claimant's treating physicians believe her current symptoms are causally related to her injury.

While respondent contends that there are no objective medical findings establishing a diagnosis of positional vertigo, I note that according to Dr. Marsh's handwritten note of May 14, 2007 he no longer believes that claimant suffers from positional vertigo, but instead believes claimant's dizziness is the result of a functional disorder. Furthermore, the claimant had an objective finding of injury in the form of a laceration to her scalp which required four stitches to close. This is an objective finding and according to claimant's treating physicians resulted in the dizziness from which she now suffers.

Arkansas Code Annotated section 11-9-102(4)(D) (Supp. 2007) provides, "A compensable injury must be established by medical evidence supported by objective findings as defined in subdivision (16) of this section." "Objective findings" are defined as "those findings which cannot come under the voluntary control of the patient." Ark. Code Ann. § 11-9-102(16)(A)(i) (Supp. 2007).

In this case, there were no objective findings establishing either positional vertigo or a functional disorder. All of the tests performed on Balli were either unremarkable (MRI) or negative (ENG and ABR tests). While the ALJ noted a laceration to Balli's scalp as an objective finding, this was an objective finding supporting payment of medical

benefits for the laceration, which had already been made by appellants, but not as to positional vertigo or a functional disorder. *See Parson v. Arkansas Methodist Hospital*, 103 Ark. App. 178, \_\_\_ S.W.3d \_\_\_ (2008) (holding that facial hematoma and contusions were undisputedly objective findings, but they only supported Parson's head injury and were not sufficient to support a compensable injury to the brain). Because there were no objective medical findings to support a diagnosis of a work-related injury of either positional vertigo or a functional disorder, the ALJ's and Commission's award of additional medical benefits to Balli must be reversed.

Reversed.

PITTMAN and GLADWIN, JJ., agree.